

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto
Hearing Date: Wednesday, July 20, 2016
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

1. [15-12902](#)-B-7 MISAEL AGUAYO
JES-2
JAMES SALVEN/MV
JOHN BIANCO/Atty. for dbt.

MOTION TO SELL
6-9-16 [[28](#)]

The motion will proceed as scheduled for submission of higher and better bids. The trustee's motion to sell the real property will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order after the hearing.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here. The sale appears to be a reasonable exercise of the trustee's business judgment.

2. 15-13904-B-7 NICHOLAS/CLARISSA MARESCA MOTION FOR RELIEF FROM
 APN-1 AUTOMATIC STAY
 SANTANDER CONSUMER USA INC./MV 6-13-16 [[18](#)]
 TIMOTHY SPRINGER/Atty. for dbt.
 AUSTIN NAGEL/Atty. for mv.
 DISCHARGED

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtors because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. No appearance is necessary.

The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

3. [16-11804](#)-B-7 EMMA POTTER
GHW-1
FEDERAL NATIONAL MORTGAGE
ASSOCIATION/MV
BRIAN FOLLAND/Atty. for dbt.
GLENN WECHSLER/Atty. for mv.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
6-7-16 [[19](#)]

This matter will proceed as scheduled. The parties shall be ready to discuss dates for further hearing on this matter and setting the factual issues for trial. If the trustee intends to participate in, or to file, an adversary proceeding related to this property or these claims then he shall appear in addition to the parties.

This motion was filed and originally noticed pursuant to LBR 9014-1(f) (2). Accordingly, the movant has waived all time restrictions under 11 U.S.C. sec. 362(e) for final ruling in this matter. See, LBR 4001-1(a) (1) and 9014-1(f) (2) (B).

The factual dispute on this motion appears to be the binding effect of the stipulation for entry of judgment in the state court eviction proceedings. There seems to be no dispute that the judgment was entered and was entered by stipulation. The debtor's response is that the Trustee is going to file an adversary proceeding asserting various claims including "elder abuse" but there is no adversary proceeding filed as of July 18. Stay relief proceedings are summary proceedings and are not an appropriate forum for these issues to be fully litigated. The parties should be prepared to discuss what issues need to be tried on this motion at the hearing. The court will then set dates to litigate those issues should it be convinced further trial is needed. It is noted neither party has reserved rights to have material factual disputes determined by live testimony. See LBR 9014-1(g) (3).

4. [16-10521](#)-B-7 ALAN ENGLE
FW-3
TRUDI MANFREDO/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
6-22-16 [[64](#)]

PETER BUNTING/Atty. for dbt.
GABRIEL WADDELL/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The sale appears to be a reasonable exercise of the trustee's business judgment.

5. [12-16724](#)-B-7 RAY/SHIRLEY CROUCH
PFT-1
PETER FEAR/MV

MOTION TO EMPLOY JOHN W. HRON,
JR. AS SPECIAL COUNSEL AND/OR
MOTION TO PAY
6-17-16 [[76](#)]

VINCENT GORSKI/Atty. for dbt.
PETER FEAR/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

6. [16-10734](#)-B-7 AMADOR/HELEN GONZAGA
PFT-2
PETER FEAR/MV

MOTION TO EMPLOY GOULD AUCTION
AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF
PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
6-20-16 [[17](#)]

PATRICIA CARRILLO/Atty. for dbt.
PETER FEAR/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The sale appears to be a reasonable exercise of the trustee's business judgment.

7. [15-12735](#)-B-7 BERTHA GUILLEN
JES-1
JAMES SALVEN/MV
OSCAR SWINTON/Atty. for dbt.

MOTION TO SELL
6-2-16 [[31](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The sale appears to be a reasonable exercise of the trustee's business judgment.

8. [14-12536](#)-B-7 THOMAS CUTLER
RHT-9
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO PAY
6-10-16 [[107](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

9. [14-12536](#)-B-7 THOMAS CUTLER
TGM-2

MOTION FOR COMPENSATION FOR
TRUDI G. MANFREDO, TRUSTEES
ATTORNEY(S)
6-14-16 [[112](#)]

PETER FEAR/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

10. [13-11837](#)-B-7 STRONGTOWER FINANCIAL, MOTION FOR ADMINISTRATIVE
RHT-5 INC., A CALIFORNIA EXPENSES
ROBERT HAWKINS/MV 6-9-16 [[82](#)]
TRUDI MANFREDO/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

The motion will be granted and the payment of administrative expenses will be approved, *nunc pro tunc*, without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11. [16-11837](#)-B-7 MYRA SHAW
APN-1
SANTANDER CONSUMER USA INC./MV
JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-16-16 [[11](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

12. [16-11839](#)-B-7 AARON HUDGENS
AP-1
BANK OF HAWAII/MV
JANINE ESQUIVEL/Atty. for dbt.
DREW CALLAHAN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-16 [[9](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

13. [16-12142](#)-B-7 IGNACIA GUTIERREZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-29-16 [[15](#)]

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

14. [16-11643](#)-B-7 HECTOR ZAVALZA
BN-1
THE GOLDEN 1 CREDIT UNION/MV
ERIC ESCAMILLA/Atty. for dbt.
VALERIE PEO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-22-16 [[14](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code 2923.5 to the extent that it applies. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

15. [08-14346](#)-B-7 MEHER/BOSE CHEKERDEMIAN
KDG-2
MEHER CHEKERDEMIAN/MV

MOTION TO AVOID LIEN OF
CREDITORS TRADE ASSOCIATION,
INC., THE DIRECTOR OF
INDUSTRIAL RELATIONS AS
ADMINISTRATOR OF THE UNINSURED
EMPLOYERS FUND STATE OF
CALIFORNIA, AND STATE LABOR
COMMISSIONER CHIEF DIVISION OF
LABOR STANDARDS ENFORCEMENT
STATE OF CALIFORNIA
5-31-16 [[29](#)]

HAGOP BEDOYAN/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. The liens will be avoided as to each of the named respondents.

16. [16-10350](#)-B-7 CHRISTINA MORALES
DRJ-1
CHRISTINA MORALES/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO DELAY DISCHARGE
6-13-16 [[17](#)]

This motion will be granted in part and denied without prejudice in part. The court will enter a civil minute order. No appearance is necessary.

Pursuant to an interim order of the court, the entry of the debtor's discharge will be delayed until September 28, 2016.

Contrary to the facts in *In re Rich*, 544 B.R. 436, 439 (Bankr. E.D. Cal, 2016), to date there has been no court authorization for the sale of any vehicles in this case. The delay of the entry of discharge will provide an opportunity for the trustee to file his motion for authority to sell property of the estate to the debtor.

The debtor may seek further deferral of entry of discharge, for cause, by a motion filed, served, and heard, on or before September 28, 2016.

17. [16-10951](#)-B-7 MARK RAMIREZ
UST-1
TRACY DAVIS/MV
MARK ZIMMERMAN/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
6-10-16 [[19](#)]

**This motion will be denied as moot. The court will enter a civil minute order.
No appearance is necessary.**

**The debtor has filed and served a motion to convert the case that has been set
for August 10, 2016.**

**Because the motion to convert from chapter 7 to chapter 13 is in response to the
U.S. Trustee's motion to dismiss under §707(b), the debtor may file a notice of
conversion and the case will be converted without a hearing.**

18. [16-12156](#)-B-7 FRANCISCO MORAN
UST-1
TRACY DAVIS/MV

AMENDED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR , AMENDED MOTION TO
EXTEND TIME TO FILE A MOTION TO
DISMISS CASE UNDER SEC. 707(B)
6-17-16 [[32](#)]

JOEL WINTER/Atty. for dbt.
TERRI DIDION/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The time for the trustee or U.S. Trustee to file a complaint objecting to the debtor's discharge under 11 U.S.C. §727 and a motion to dismiss under 11 U.S.C. §707(b) will be extended to sixty days after the conclusion of the meeting of creditors held pursuant to 11 U.S.C. §341.

It appears from the record and the trustee's uncontroverted declaration she needs additional time to review the debtor's financial affairs.

The debtor filed a *pro se* petition in the Northern District of California and a trustee was appointed. The meeting of creditors was adjourned because of the failure of the debtor to submit tax returns and pay advices as required by the Bankruptcy Code. At the continued meeting the trustee raised the issue of venue and the meeting was again adjourned. After an ex-parte motion was filed by debtor's counsel an order transferring the case to the Eastern District was entered. A trustee was appointed and the §341 meeting was rescheduled for July 25, 2016.

19. [12-14857](#)-B-7 VICTOR DIAZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-28-16 [[31](#)]

R. BELL/Atty. for dbt.
FEE PAID ON 7/1/16

The OSC will be vacated. It appears from the record that the required fee has been paid. Counsel will inform the debtor that no appearance is necessary.

20. [15-13057](#)-B-7 RAJAB-ALI/MARYAM SHARBATI MOTION TO EMPLOY STUART M.
PLG-1 PRICE AS SPECIAL COUNSEL AND/OR
RANDELL PARKER/MV MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PRICE LAW GROUP,
APC FOR STUART M. PRICE,
SPECIAL COUNSEL(S)
6-27-16 [[41](#)]

STUART PRICE/Atty. for dbt.

This motion will be denied without prejudice to counsel's rights, if any, pursuant to a charging lien. The court will prepare a minute order. No appearance is necessary.

The form of the proof of service does not comply with Local Bankruptcy Rule 9014-1(d)(2) and/or 9004-1 (see Local Rules, Appendix II, EDC 2-901, Revised Guidelines for the Preparation of Documents (5)).

In addition, it appears that the services for which the trustee seeks to employ special counsel have already been performed and that there is nothing left for proposed special counsel to do in this case.

21. [16-11359](#)-B-7 BRYAN/ARMENDA BECKER MOTION TO CONFIRM TERMINATION
DJP-1 OR ABSENCE OF STAY
EDUCATIONAL EMPLOYEES CREDIT 6-24-16 [[14](#)]
UNION/MV
JANINE ESQUIVEL/Atty. for dbt.
DON POOL/Atty. for mv.
WITHDRAWN

This motion has been withdrawn. No appearance is necessary.

22. [16-11564](#)-B-7 TIMBERLY FERRIS
NLG-1
FIRST TECH FEDERAL CREDIT
UNION/MV
ISMAEL RODRIGUEZ/Atty. for dbt.
NICHOLE GLOWIN/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-13-16 [[14](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor filed a notice of non-opposition and other respondents' defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

23. [16-10368](#)-B-7 MANUEL BENITEZ
TMT-1

ORDER TO SHOW CAUSE REGARDING
MOTION FOR RECONSIDERATION OF
FEE WAIVER
6-13-16 [[33](#)]

This matter will proceed as scheduled.

24. [16-10771](#)-B-7 CHRIS/KIMBERLY KATELEY MOTION TO SELL
PFT-1 6-9-16 [[27](#)]
PETER FEAR/MV
MARK ZIMMERMAN/Atty. for dbt.
PETER FEAR/Atty. for mv.

This motion will be denied without prejudice. The court will enter a civil minute order. No appearance is necessary.

This motion to sell the estate's interest in real property was noticed to creditors as a preliminary hearing. However, the property to be sold is described in the notice as "18709 Brookhurst St., Ste 5A, Fountain Valley, CA 92708," and does not appear to be the property the trustee is actually selling, 800 W. Atkins, Ridgecrest, CA.

25. [16-12072](#)-B-7 VICTOR/INEZ RAMIREZ ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-22-16 [[13](#)]

THOMAS GILLIS/Atty. for dbt.
\$335.00 FILING FEE PAID
6/29/16

The OSC will be vacated. It appears from the record that the required fee has been paid. Counsel will inform the debtors that no appearance is necessary.

26. [13-17082](#)-B-7 RONALD RUSHING MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 6-8-16 [[240](#)]
SCOTT LYONS/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

27. [16-11794](#)-B-7 JEREMY CRANK
APN-1
SANTANDER CONSUMER USA INC./MV
JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-9-16 [[12](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The debtor's default will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law.

The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. If the notice and motion requested a waiver of Federal Rules of Bankruptcy Procedure 4001(a)(3), that relief will be granted.

If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

28. [16-12092](#)-B-7 RYAN FRITZ
JWC-1
WA FUNDING, INC./MV
JOHN CADWALADER/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-6-16 [[15](#)]

This motion will be denied without prejudice as to the motion for relief, and denied with prejudice as to the request for *nunc pro tunc* relief. The court will enter a civil minute order. No appearance is necessary.

The motion for relief from the automatic stay will be denied without prejudice because it was not supported by admissible evidence as required by LBR 9014-1(d)(7), which states, "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

The motion for *nunc pro tunc* relief will be denied with prejudice. The moving papers show that the filing of the Unlawful Detainer Complaint, on June 15, 2016, and its service on the debtor, on June 20, are void as acts made in violation of the automatic stay which arose upon the filing of the bankruptcy petition on June 10, 2016. The debtor listed his executory lease with Regency Property Management, presumably movant's agent, which would have received notice of the bankruptcy filing prior to the service of the complaint on the debtor.

In addition, the pleadings do not comply with the Local Bankruptcy Rules, Appendix II, EDC 2-901, Eastern District Bankruptcy Court's Guidelines for the Preparation of Documents, Section III.A. (revised August 12, 2015).

11:00 A.M.

1. [16-11501](#)-B-7 TRINA GONZALES PRO SE REAFFIRMATION AGREEMENT
WITH FRESNO COUNTY FEDERAL
CREDIT UNION
6-27-16 [[21](#)]

This matter will proceed as scheduled.

2. [16-11812](#)-B-7 RAYMOND/JAMIE ENSMINGER REAFFIRMATION AGREEMENT WITH
FORD MORTOR CREDIT COMPANY
6-13-16 [[11](#)]

SCOTT LYONS/Atty. for dbt.

Approval of the Reaffirmation Agreement will be denied. Counsel shall inform the debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney did not check the box rebutting the presumption of undue hardship on the face of the reaffirmation agreement. Section C shows that the debtor has only \$24.20 with which to pay the monthly payment of \$1,112.91.

3. [16-11530](#)-B-7 JOAN KOSICK REAFFIRMATION AGREEMENT WITH
WESTAMERICA BANK
6-9-16 [[16](#)]

JAMES MILLER/Atty. for dbt.

Approval of the Reaffirmation Agreement will be denied. Counsel shall notify his or her client that no appearance is necessary.

The debtor's attorney signed the reaffirmation agreement certifying that he explained the agreement to the debtor, but did not check the box to state an opinion that the reaffirmed debt will not create an undue hardship. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.

4. [13-13368](#)-B-7 SAMUEL QUIROZ

REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
6-20-16 [[31](#)]

ANDREW MAGWOOD/Atty. for dbt.

Approval of the Reaffirmation Agreement will be denied. The debtor's attorney shall inform his client that no appearance is necessary.

The Reaffirmation Agreement is not complete because it was not signed by the creditor. The court will issue a minute order deeming the Reaffirmation Agreement to be non-compliant with the Bankruptcy Code and non-binding on the parties.

5. [16-10981](#)-B-7 DANIEL MACIAS

PRO SE REAFFIRMATION AGREEMENT
WITH TD AUTO FINANCE LLC
6-6-16 [[16](#)]

This matter will proceed as scheduled.

6. [16-10785](#)-B-7 MARTHA MACIEL

PRO SE REAFFIRMATION AGREEMENT
WITH VEROS CREDIT
6-10-16 [[17](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [15-12702](#)-B-7 MARTIN STEBBEN CONTINUED STATUS CONFERENCE RE:
[16-1044](#) COMPLAINT
FEAR V. CITI/CITIBANK SOUTH 4-15-16 [[1](#)]
DAKOTA, N.A.
ROBERT HAWKINS/Atty. for pl.

The matter will proceed as scheduled. Plaintiff should be prepared to explain why entry of default has not been requested.

2. [14-11114](#)-B-7 CHRISTOPHER WEINERT STATUS CONFERENCE RE: COMPLAINT
[16-1056](#) 5-10-16 [[1](#)]
U.S. TRUSTEE V. WEINERT
ROBIN TUBESING/Atty. for pl.

For the reasons indicated in number 3 below, this status conference will be continued to August 24, 2016, at 1:30 p.m. No appearance is necessary.

3. [14-11114](#)-B-7 CHRISTOPHER WEINERT MOTION FOR ENTRY OF DEFAULT
[16-1056](#) UST-1 JUDGMENT
U.S. TRUSTEE V. WEINERT 6-22-16 [[11](#)]
ROBIN TUBESING/Atty. for mv.

This motion will be continued to August 24, 2016 at 1:30 pm. Additional evidence and briefing will be filed on or before August 17, 2016.

The United States Trustee asks for entry of a default judgment revoking this debtor's discharge pursuant to 11 U.S.C. § 727(d)(3) because the debtor refused to obey a lawful order of the court pursuant to 11 U.S.C. §727(a)(6). The evidence submitted may establish the entry of the lawful order requiring the debtor to turnover 2014 tax refunds/returns or the information needed to prepare the returns and that the debtor received notice of the order.

A party objecting to discharge under 11 U.S.C. sec. 727(a)(6)(A) must demonstrate that the debtor received the order in question and failed to comply with its terms. *Standiferd v. United States Trustee*, 641 F.3d 1209,1212 (10th Cir., 2011) quoting *In re Jordan*, 521 F. 3d 430, 433 (4th Cir., 2008). The debtor then bears the burden of explaining his or her non-compliance. *Id.* A majority of courts require the moving party to show some volition or wilfulness on the part of the debtor. *Jordan*, 521 F. 3d at 433. Ultimately, the court may not deny discharge under §727(a)(6)(A) unless it finds the debtor's non-compliance to be wilful. *Id.* The burden of proof is preponderance of the evidence. *In re Lawler*, 141 B.R. 425, 428-29 (9th Cir. BAP 1992). It is within the discretion of the court to find a particular violation so serious as to require denial of discharge. *In re Devers*, 759 F. 2d 751, 755 (9th Cir., 1985). A debtor's wilful or intentional refusal requires conduct which amounts to something more than a mere failure to obey the order through inadvertence, mistake or inability to comply. *In re Jordan*, 521 F. 3d at 434. The 9th Circuit BAP in an

unpublished decision has held that a court's findings must be of deliberate and knowing violations of orders to meet the statute's requirement of refusal to comply with orders. *In re Cutter*, 2010 WL 6467694 *12 (9th Cir. BAP 2010).

In addition to this high standard, the plaintiff here is seeking to revoke a discharge which is a serious matter and warrants close scrutiny. The statute is strictly construed against the moving party. *Jordan*, 521 F.3d at 433. "Refuse" is "to show or express a positive unwillingness to or comply with(as something asked, demanded, expected)." Webster's Third New International Dictionary. The plaintiff has not established the volitional refusal of this debtor to comply with the order. There is no discussion in the motion why a lesser sanction (e.g., contempt) would not be appropriate here.

There is no evidence thus far in the record on this motion that the debtor refused to obey the order; no evidence that the debtor either had the refund, the return or the information for the return. While the debtor's silence with notice of the order is troubling, the plaintiff has the burden to prove all elements. The continuance provides the plaintiff with the opportunity to provide that evidence.

The court notes that only property of the estate is subject to the trustee's motion for turn-over. Records and information received or compiled by the debtor after March 7, 2017, the date the case was filed, have never been property of the estate.

4. [15-14833](#)-B-7 FRED ALLEN
[16-1035](#)
STERLING PACIFIC LENDING, INC.
V. ALLEN
PETER FEAR/Atty. for pl.

STATUS CONFERENCE RE: AMENDED
COMPLAINT
6-15-16 [[16](#)]

This matter will proceed as scheduled.

5. [15-14034](#)-B-13 MICHAEL/LUCIA LOPEZ
[15-1133](#)
U.S. TRUSTEE V. LOPEZ ET AL
TERRI DIDION/Atty. for pl.
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-29-15 [[1](#)]

This matter will be continued to August 24, 2016, at 1:30 p.m., to be heard with the motion to approve the settlement agreement. No appearance is necessary.

6. [16-11147](#)-B-13 NIGEL MARIN
[16-1053](#)
U.S. TRUSTEE V. MARIN
ROBIN TUBESING/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-2-16 [[1](#)]

This matter will be dropped from calendar. The court intends to grant the motion and enter a default judgment below, #7, UST-1. No appearance is necessary.

7. [16-11147](#)-B-13 NIGEL MARIN
[16-1053](#) UST-1
U.S. TRUSTEE V. MARIN
ROBIN TUBESING/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
6-22-16 [[12](#)]

The motion for entry of default judgment will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

It appears from the record and the pleadings that the defendant is a serial bankruptcy filer who has filed multiple abusive bankruptcy cases since March 13, 2015, for the sole purpose of invoking the automatic stay to hinder and delay creditors. The defendant's behavior constitutes an abuse of the bankruptcy system, and without an order barring refiling, the Defendant's creditors are at risk for further serial filings, and abuse. The defendant's failure to perform duties imposed by the Bankruptcy Code constitutes willful behavior sufficient to impose a 180-day bar against refiling pursuant to 11 U.S.C. § 109(g) (1).

In that a 180-day bar is insufficient to protect the defendant's creditors from the defendant; because the plaintiff has no adequate remedy at law; the defendant's actions and omissions hinder the administration of justice and cause creditors and the bankruptcy system irreparable harm; and it appears that the defendant will continue to abuse the bankruptcy process, the court will issue an injunction barring the defendant from filing another bankruptcy case for two years.

8. [15-12549](#)-B-7 LAURA CEBALLOS
[16-1055](#)
SALVEN V. GARCIA ET AL
TRUDI MANFREDO/Atty. for pl.

STATUS CONFERENCE RE: COMPLAINT
5-9-16 [[1](#)]

The status conference will be dropped from calendar and may be reset by any party on 10 days' notice. No appearance is necessary.

It appears the defendant's default has been entered. The clerk of the court may close the adversary proceeding without notice in 60 days unless the adversary proceeding has been set for a further status conference within that time. Either party may request an extension of this time up to 30 days by ex parte application for cause. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will prepare and enter a civil minute order.

9. [15-14470](#)-B-7 RAUL/RAQUEL REYES
[16-1029](#) TGM-1
FEAR V. REYES
TRUDI MANFREDO/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
6-9-16 [[16](#)]

This matter will be continued to August 24, 2016, at 1:30 p.m. Additional supporting evidence, as specified below, shall be submitted by August 17, 2016. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under FRBP 9014(c). Upon default, factual allegations will be taken as true, except those relating to amount of damages. *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought.

Here, the complaint and the motion for entry of default judgment do not include sufficient evidence to support the damage element of a claim for relief for avoidance of a preference or for a fraudulent conveyance. The only information in the record to support the allegation that the transfer was without value is the trustee's opinion of the property's value, and the debtors' amended Statement of Financial Affairs, question # 10 regarding the transfer which cannot be used as an admission against the defendant, the transferee-daughter.

10. [16-10016](#)-B-13 KEVIN DAVEY
[16-1074](#) VAG-1
DAVEY V. OCWEN LOAN SERVICING,
LLC ET AL
ORDER #14

ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION
7-6-16 [[14](#)]